APPENDIX A

CONSTITUTIONAL PROVISIONS AND STATUTES

AMENDMENT 14, SECTION 1
UNITED STATES CONSTITUTION

Due process and equal protection of laws * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE 424

Bail forfeited, when

CODE OF CRIMINAL PROCEDURE OF THE STATE OF TEXAS

Whenever a defendant is bound by recognizance or bail bond to appear at any term of a court, and fails to appear on the day set apart for taking up the criminal docket, or any subsequent day when his case comes up for trial, a forfeiture of his recognizance or bail bond shall be taken.

ARTICLE 425

Manner of taking a forfeiture

CODE OF CRIMINAL PROCEDURE OF THE STATE OF TEXAS

Recognizances and bail bonds are forfeited in the following manner: The name of the defendant shall be called distinctly at the court house door, and, if the defendant does not appear within a reasonable time after such call is made, judgment shall be entered that the State of Texas recover of

the defendant the amount of money in which he is bound, and of his sureties, the amount of money in which they are respectively bound, which judgment shall state that the same will be made final, unless good cause be shown at the next term of the court why the defendant did not appear.

ARTICLE 426

Citation to sureties

CODE OF CRIMINAL PROCEDURE
OF THE STATE OF TEXAS

After the adjournment of the court, a citation shall issue notifying the sureties of the defendant that the recognizance or bond has been forfeited, and requiring them to appear at the next term of the court and show cause why the same should not be made final. It shall not be necessary to give notice to the defendant.

ARTICLE 433

Scire facias docket

CODE OF CRIMINAL PROCEDURE
OF THE STATE OF TEXAS

When a forfeiture has been declared upon a recognizance or bail bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, as defendants; and the proceedings had therein shall be governed by the same rules governing other civil suits.

ARTICLE 434

Sureties may answer at next term

CODE OF CRIMINAL PROCEDURE
OF THE STATE OF TEXAS

At the next term of the court, after the forfeiture of the recognizance or bond, if the sureties have been duly notified, or at the first term of the court after the service of such notice, the sureties may answer in writing and show cause why the defendant did not appear, which answer may be filed within the time limited for answering in other civil actions.

ARTICLE 436

Causes which will exonerate

CODE OF CRIMINAL PROCEDURE
OF THE STATE OF TEXAS

The following causes, and no other, will exonerate the defendant and his sureties from liability upon the forfeiture taken:

1. That the recognizance or bail bond is, for any cause, not a valid and binding undertaking in law. If it be valid and binding as to the principal, and one or more of his sureties, they shall not be exonerated from liability because of it being invalid and not binding as to another surety or sureties. If it be invalid and not binding as to the principal, each of the sureties shall be exonerated from liability. If it be valid and binding as to the principal, but not so as to the sureties, the principal shall not be exonerated, but the sureties shall be.

2. The death of the principal before the forfeiture was taken.

3. The sickness of the principal or some uncontrollable circumstance which prevented his appearance at court, and it must, in every such case, be shown that his failure to appear arose from no fault on his part. The causes mentioned in this subdivision shall not be deemed sufficient to exonerate the principal and his sureties unless such principal appear before final judgment on the recognizance or bail bond to answer the accusation against him, or show sufficient cause for not so appearing.

4. Failure to present an indictment or information at the first term of the court which may be held after the principal has been admitted to bail, in case where the party was bound over before indictment or information, and the prosecution has not been continued by order of the court.

ARTICLE 437

Judgment final

CODE OF CRIMINAL PROCEDURE OF THE STATE OF TEXAS

When, upon a trial of the issues presented, no sufficient cause is shown for the failure of the principal to appear, the judgment shall be made final against him and his sureties for the amount in which they are respectively bound; and the same shall be collected by execution as in civil actions. Separate executions shall issue against each party for the

amount adjudged against him. The costs shall be equally divided between the sureties, if there be more than one.

ARTICLE 438

Judgment final by default

CODE OF CRIMINAL PROCEDURE
OF THE STATE OF TEXAS

When the sureties have been duly cited and fail to answer, and the principal also fails to answer within the time limited for answering in other civil actions, the court shall enter judgment final by default.

ARTICLE 439

The court may remit

CODE OF CRIMINAL PROCEDURE
OF THE STATE OF TEXAS

If, before final judgment is entered against the bail, the principal appear or be arrested and lodged in jail of the proper county, the court may, at its discretion, remit the whole or part of the sum specified in the bond of recognizance.

ARTICLE 440

Forfeiture set aside

CODE OF CRIMINAL PROCEDURE
OF THE STATE OF TEXAS

When the principal appears before the entry of final judgment, and sufficient cause is shown for his failure to

appear before the forfeiture is taken, and a trial is had of the criminal action pending against him, he shall be entitled to have the forfeiture set aside. The criminal action against him shall stand for trial, but the State shall not be forced to try the same until reasonable time has been allowed to prepare for trial, and the State shall, in such case, be entitled to a continuance.

APPENDIX B

COPIES OF OPINIONS BELOW

No. 33,266

MYRPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

Appeal From Dallas County

PRIOR ORDER OF REVERSAL WITHDRAWN; REFORMED & AFFIRMED ON CONDITION OF REMITTITUR

OPINION BY
MORRISON
Judge

FILED IN THE COURT OF CRIMINAL APPEALS
Austin, Texas
JUNE 14, 1961
GLENN HAYNES
CLERK

No. 33,266

MYRPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

Appeal From Dallas County

OPINION
ON MOTION FOR REHEARING

The prior order reversing and remanding this cause is withdrawn.

We find the judgment of forfeiture to be excessive in the sum of $500.00 and, accordingly, if appellee files a remittitur in that amount within 20 days, the judgment will be reformed and affirmed; otherwise, the cause will be reversed and remanded.

Morrison, Judge

(Delivered June 14, 1961)

No. 33,266

MYRPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM
DALLAS COUNTY

DISSENTING OPINION
ON
MOTION FOR REHEARING

OPINION BY
WOODLEY, Presiding Judge

FILED IN THE COURT OF CRIMINAL APPEALS
Austin, Texas
JUNE 14, 1961
GLENN HAYNES
CLERK

No. 33,266

MYRPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

Appeal From Dallas County

DISSENTING OPINION ON MOTION FOR REHEARING

I do not agree that the trial court's failure to adjudicate and determine whether any remission should be made, under the provisions of Art. 439 C.C.P., authorizes this court to effect a remission of a part of the amount of the judgment appealed from. Reference is made to my dissent in Ricard et al v. State, No. 33,297, this day decided.

Woodley, Presiding Judge

(Delivered June 14, 1961.)

No. 33,266

MYRPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

Appeal From Dallas County

STATE'S SECOND MOTION FOR REHEARING—GRANTED IN PART:

JUDGMENT AS TO APPELLANT MYRPH JOHNSON IS AFFIRMED.

JUDGMENT AS TO OTHER APPELLANTS IS REFORMED AND, AS REFORMED, AFFIRMED

OPINION BY
WOODLEY,
Presiding Judge

FILED IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
November 22, 1961
GLENN HAYNES,
CLERK

No. 33,266

MYRPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

Appeal From Dallas County

OPINION
ON STATE'S SECOND MOTION FOR REHEARING

As pointed out in the motion, no ground exists for finding the judgment against appellant Myrph Johnson, principal in the bond forfeited, excessive. As to this appellant the State's second motion for rehearing is granted and the judgment is affirmed.

The majority remain convinced that the judgment against the sureties is excessive in the sum of $500. The writer's views are shown in his dissent on the State's first motion for rehearing.

Subject to its second motion for rehearing, remittitur has been filed as required in the majority opinion on the State's first motion.

The judgment as to the appellants who are sureties upon the forfeited bail bond is reformed so as to provide for the

recovery against them of the sum of $250 and all costs, and as so reformed, the judgment is affirmed.

The appellant Myrph Johnson, as well as the sureties on his appeal bond, having appealed and having superseded the judgment against them, it is ordered that judgment be entered also against the sureties on the joint supersedeas bond.

Woodley, Presiding Judge.

(Delivered November 22, 1961.)

No. 33,266

MYRPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

Appeal From Dallas County

APPELLANTS MOTION FOR REHEARING
OVERRULED

OPINION BY
DICE
Judge

FILED IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

January 17, 1962
GLENN HAYNES,
CLERK

No. 33,266

MYRPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

Appeal From Dallas County

OPINION
ON APPELLANTS MOTION FOR REHEARING

Appellants insist that the final judgment of forfeiture entered against them should be reversed because at the time of the hearing, the principal Myrph Johnson was confined in jail and was not given an opportunity to appear in court and show cause why he failed to appear when his appearance bond was forfeited.

While the record reflects that at the time of the hearing, the principal Myrph Johnson was confined in jail, it further shows that he was brought into court and testified at the hearing.

No answer was filed by the principal, Myrph Johnson in the bond forfeiture proceedings and no request was made by him or on his behalf that he be present at the hearing.

Art. 426, V. A. C.C.P., which provides for the issuance of citation to the sureties in a bond forfeiture proceeding also

provides: "* * * It shall not be necessary to give notice to the defendant."

A judgment may be rendered against all parties without service of citation on the principal. Vaughn vs. State, 29 Tex. 278.

Under the record, we find no reason to set aside our opinion affirming the judgment rendered against the principal Myrph Johnson for the full amount of the bond in the sum of $750 and all costs.

The Motion for Rehearing is overruled.

DICE, Judge

(January 17, 1962)

Opinion approved by the Court.

APPENDIX C

CLERK'S OFFICE, COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

MINUTES OF THE COURT

No. 33,266

MURPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

Appeal From Dallas County

SECOND MOTION FOR REHEARING OVERRULED
WITHOUT WRITTEN OPINION
FEBRUARY 14, 1962

This cause came on to be heard on the Appellant's Second Motion for Rehearing and the same being considered, it is ordered, adjudged and decreed by the Court that the said motion be and the same is hereby in all things overruled.

APPENDIX D

No. 33,266

MYRPH JOHNSON, *et al.*,

Appellants,

v.

THE STATE OF TEXAS,

Appellee.

Appeal From Dallas County

ORDER STAYING ISSUANCE OF MANDATE

While we see no constitutional question, if counsel in good faith desires to apply to the Supreme Court of the United States for writ of certiorari, we would favor giving him the opportunity to do so, since this is a bond forfeiture case and the State of Texas is sufficiently protected by a supersedeas bond.

The application of the Appellants for a stay of the issuance of the mandate in this cause is granted, and the Clerk of the Court of Criminal Appeals is directed to stay the issuance of the mandate and all other proceedings upon the judgment against the Appellants for a period of ninety days from this date in order that they may apply to the Supreme Court of the United States for a writ of certiorari.

And the Clerk is further directed, in the event the writ is granted by the Supreme Court of the United States, to delay the issuance of the mandate until final action by that Court in the matter.

This the 14 day of February, 1962.

/s/ W. T. McDonald

Judge, Court of Criminal Appeals
of Texas.

FILED IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

FEB. 14, 1962
Glenn Haynes
Clerk